

JAY EDWIN COLLIER

IBLA 83-156

Decided January 26, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 111384 through U MC 111403.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Where a proof of labor for unpatented mining claims was tendered to the proper office of the Bureau of Land Management prior to Oct. 22, 1979, for mining claims located before Oct. 21, 1976, the requirement of the Federal Land Policy and Management Act of 1976 was satisfied, even though the notices of location for the mining claims had not yet been filed for record with BLM.

APPEARANCES: Jay Edwin Collier, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jay Edwin Collier, on behalf of all the owners of the subject mining claims, 1/ appeals the Utah State Office, Bureau of Land Management (BLM), decision of October 15, 1982, which declared the unpatented Owl #1 through #20 placer mining claims, U MC 111384 through U MC 111403, abandoned and void because no notice of intention to hold the claims or evidence of assessment work was filed with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

1/ The claims appear to be owned by Jay Edwin Collier, Lena Collier, Palmer Collier, Don Collier, Ina May Collier Johnson, Wendall Collier, Mary Collier, and Evah Collier Rhinehart Pendleton.

The claims had been located between November 1954 and June 1956. Copies of the recorded location notices were filed with BLM September 17, 1979, as required by FLPMA.

Appellant alleges that proof of labor was filed with BLM prior to March 1, 1979, but because of administrative error, the proof of labor was not recorded. In support of this allegation, appellant submitted a copy of a BLM letter dated March 1, 1979, signed by Robert Lopez, Chief, Branch of Records and Data Management, advising Ina May Collier Johnson that BLM was unable to identify any mining claim file with the proof of labor for the Owl #1 through #20 placer mining claims, and requested that BLM be advised of the U MC numbers which had been assigned to the claims. With the appeal, there is a copy of a proof of labor recorded August 7, 1979, in Uintah County, Utah, by Ina May Collier Johnson, naming the Owl #1 through #20 placer mining claims, and bearing identifying U MC 11134 through 111403. The copy of the proof of labor does not show that it was ever filed with BLM.

It is obvious that the proof of labor recorded August 7, 1979, was not the same proof of labor allegedly filed with BLM prior to March 1, 1979. Nor does the record reflect that appellant made any response to the request of BLM in the March 1, 1979, letter for the U MC identification of the Owl #1 through #20 placer mining claims. It is equally clear, however, that a proof of labor was submitted for the instant claims.

[1] Section 314 of FLPMA reads, in pertinent part:

(a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of approval of this Act * * * file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice * * * is recorded either a notice of intention to hold the mining claim * * *, an affidavit or assessment work performed thereon * * *.

(2) File in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

The Act does not clearly spell out that the notice of location of the claim be recorded with BLM before the recordation of a proof of labor.

The regulation, 43 CFR 3833.2-1, added the requirement that the "MC" number assigned to the location notice be shown on the proof of labor to eliminate the need for the land description called for in FLPMA.

From the BLM letter of March 1, 1979, it is undeniable that a proof of labor for the Owl #1 through #20 claims was filed with BLM in 1979 before

October 22. Such filing satisfied the requirements of FLPMA. Accordingly, we find it was error for BLM to declare the Owl #1 through #20 claims abandoned and void in its decision of October 15, 1982.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM for further appropriate action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

